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STATE PASS U.S. COPYRIGHT OFFICE FOR M.WOODS AND M.PALLANTE
COMMERCE FOR 4212/D.CALVERT AND 6990/R.LAYTON
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E.O. 12958: N/A

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SUBJECT: SPAIN/INTERNET PIRACY: ANOTHER VIEW OF INTER-MINISTERIAL
COMMISSION

REFS: A) MADRID 1075; B) MADRID 1052; C) MADRID 982

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SUMMARY

¶1. (SBU) Visiting U.S. Commerce Department official Robin Layton met November 5 with GOS Information Society policy official Salvador Soriano. They discussed electronic commerce and intellectual property rights issues. Soriano outlined the recently formed Inter-Ministerial Commission and its approaches to combating copyright piracy on websites. His description of the Commission's approach differed significantly from that of the Culture Ministry official reported in ref A. While we are encouraged by the activity and the GOS' desire to address the problem, we believe it increasingly unlikely that the Commission will be able to produce much more than preliminary recommendations by the December 31 deadline. End Summary.

¶2. (U) Robin Layton, Director of ITA's Office of Technology and Electronic Commerce, met with Salvador Soriano, Deputy Director General for Information Society Services at the Ministry of Industry, Tourism, and Trade (MITYC), on the margins of the 31st International Conference of Data Protection and Privacy Commissioners. Soriano confirmed that the recently formed Inter-Ministerial Commission (see ref B) is comprised of, in addition to MITYC, the Ministries of Culture, Interior, Justice, Education, Foreign Affairs and Cooperation, and Economy and Finance, as well as the Presidency, are represented. He believes the most productive first step the Commission can take is to identify actions to dissuade websites and their operators from making illicit content available.

A THREE-PRONGED APPROACH

¶3. (U) Soriano outlined a three-pronged approach. The first step, he said, will be to make more content legally available at affordable prices as an alternative to illicit downloading and file-sharing. The Secretariat of State for Telecommunications and the Information Society, where Soriano works, is funding various "legal offer" initiatives under Plan Avanza, its 5-year program for investment in the Information and Communication Technologies (ICT) sector. The second piece is awareness and public education: Soriano discussed the pilot program "Educate to Create," in which MITYC works in partnership with Microsoft and others to expose the public, especially students, to the excitement of creation and the feeling of ownership it offers. He also noted that MITYC has been working with the Business Software Alliance (BSA) on programs to combat software piracy, which have helped reduce piracy levels. Layton

commented that her office also works collaboratively with BSA.

¶4. (U) As the third element of the Commission's approach, Soriano mentioned legal reform. As he phrased the question, what can the government do to improve the action of courts in IPR and especially Internet piracy cases? He speculated that perhaps Spain does not require substantial changes to its legal framework for IPR, but can provide better enforcement and make the courts work faster within the existing framework. He noted that the Commission is mandated to present its recommendations by December 31, a tight deadline. The issue is complicated, he averred, as it involves finding ways to protect the rights of creators without disadvantaging service providers. A session at the Data Protection and Privacy Commissioners' Conference on how to reconcile IPR with privacy rights contained a lot of analysis but not much in the way of solutions, he said.

¶5. (U) In response to Layton's question about the timeline for implementation, Soriano was not certain how long it would take to put the changes in place. Asked by Econoff whether the legal reform element would require legislation, Soriano said that the Ministry of Justice was responsible for determining what aspects, if any, of the Commission's recommendations would require amending existing legislation or proposing new laws. He clearly hoped that significant changes could be implemented under the government's existing authority, without requiring Congressional approval.

ICT AND ELECTRONIC COMMERCE

¶6. (U) Layton noted that she had read with interest the GOS draft ICT agenda for its EU Presidency. She suggested that Soriano visit the United States in the near future. She would be happy to arrange meetings with the appropriate officials in the Commerce Department. The U.S., she said, is also working to see how well its regime for intellectual property protection fits with current modes of

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transmission. Soriano noted that he hopes to accompany his boss, Secretary of State for Telecommunications and the Information Society Francisco Ros, to Washington o/a January 20.

¶7. (U) Soriano also provided Layton with a collection of electronic commerce statistics for Spain. He noted that e-commerce is a mature market in Spain, but that consumers remain a challenge. Spaniards, he said, are not used to purchasing via long distance and remain reluctant to buy over the Internet.

COMMENT

¶8. (SBU) Soriano's exposition of the work of the Inter-Ministerial Commission is very different than the one provided in a recent meeting by Carlos Guervos of the Ministry of Culture (see ref A). The two Ministries that share the lead on Internet piracy issues - Culture and MITYC - have different institutional equities. Culture wants to do all it can for content providers and cultural industries, but is often hampered by a lack of resources and clout. MITYC is closer to the technology sector and Internet Service Providers (ISPs).

¶9. (SBU) Comment continued: Soriano did not even mention a possible administrative solution - creating a competent authority that could instruct ISPs to take down or block websites that make illicit content available - that was central to Guervos' outline of the Commission's likely proposals. Unlike Guervos, Soriano thought it might be possible to improve enforcement within the existing legal framework, without passing new legislation. State Secretary Ros has expressed the view that Spain's legal regime for IPR protection is no better or worse than that of other European countries, an opinion emphatically not shared by the rights-holder community. It remains to be seen how ambitious a proposal the Inter-Ministerial Commission will make. Even acknowledging that several Ministries - MITYC, Culture, Justice, and Interior - have been working informally on this problem for several months, it is hard to imagine a detailed, well thought-out proposal emerging by December 31. It seems increasingly likely that the Commission will make preliminary recommendations by then and follow up with a more detailed proposal

sometime thereafter. End Comment.

110. (U) Director Layton has cleared a draft of this cable.

Chacon